KETUA PENGARAH KASTAM JABATAN KASTAM DIRAJA MALAYSIA v. HONG LEONG YAMAHA MOTORS SDN BHD

FEDERAL COURT, PUTRAJAYA
ZABARIAH MOHD YUSOF FCJ
HARMINDAR SINGH DHALIWAL FCJ
RHODZARIAH BUJANG FCJ
ABU BAKAR JAIS FCJ
HANIPAH FARIKULLAH FCJ
[CIVIL APPEAL NO: 01(f)-24-08-2024(B)]
30 JULY 2025

Abstract – *(i) A 'registered manufacturer', under the Sales Tax Act 2018, is defined by its activity of manufacturing 'taxable goods'. Therefore, a manufacturer who produces both taxable and tax-exempted goods is only eligible for the sales tax exemption on imported raw materials under Item 1, Schedule C of the Sales Tax (Persons Exempted From Payment of Tax) Order 2018 if those materials are used to manufacture 'taxable finished goods'; (ii) In Malaysia, a tax relief or exemption provision should be interpreted differently from a tax-charging provision. In a tax relief provision, the taxpayer bears the burden of proving they fall within the scope of the exemption. Ambiguity in such a provision should not be construed in favour of the taxpayer, and a literal interpretation that leads to an absurd outcome should be avoided in favour of a purposive interpretation. This approach aligns with the principles of statutory interpretation in the UK and Australia.*

REVENUE LAW: *Income tax – Sales tax – Exemption – Whether registered manufacturer of both taxable and tax-exempted goods entitled to claim sales tax exemption on imported raw materials used to manufacture tax-exempted goods – Sales Tax Act 2018 – Sales Tax (Persons Exempted From Payment of Tax) Order 2018 – Sales Tax (Goods Exempted from Tax) Order 2018 – Sales Tax (Goods Exempted from Tax) (Amendment) Order 2018*

STATUTORY INTERPRETATION: *Statutes – Taxing statutes – Relief/exemption provisions – Distinction between tax-charging provision and provision providing relief – Literal and purposive interpretation – Whether tax relief provision should be interpreted in favour of taxpayer in case of ambiguity – Application of English principles of statutory interpretation in Malaysia – Sales Tax Act 2018 – Sales Tax (Persons Exempted From Payment of Tax) Order 2018 – Sales Tax (Goods Exempted from Tax) Order 2018 – Sales Tax (Goods Exempted from Tax) (Amendment) Order 2018*

WORDS & PHRASES: *Interpretation of – 'Registered manufacturer', 'Taxable goods' – 'Tax exempted goods', 'Finished goods' – Sales Tax Act 2018 – Sales Tax (Persons Exempted From Payment of Tax) Order 2018 – Sales Tax (Goods Exempted from Tax) Order 2018 – Sales Tax (Goods Exempted from Tax) (Amendment) Order 2018*

Yamaha Motors was a registered manufacturer within the meaning of the Sales Tax Act 2018 ('Act 806') and the Schedule of the Sales Tax (Persons Exempted From Payment of Tax) Order 2018 ('PU(A) 210'). Yamaha Motors imported various components for motorcycles and had them assembled at the factory. It was also a franchise holder of locally assembled manufacturer for Yamaha Motorcycles (below 250cc and above 250cc). Franchise holders are not covered by the Act 806 and PU(A) 210. In the context of tax treatment, a 'franchise holder' is not eligible to claim for the exemption under PU(A) 210. Due to franchise holder not being covered under PU(A) 210, the Government extended the same tax relief to a franchise holder through different instruments, namely by three Ministerial letters issued by the Minister in the exercise of his statutory powers to exempt ('Minister's exemption'). Yamaha Motors had generated and utilised an exemption certificate dated 30 August 2018 to import components for the assembly of Yamaha motorcycles below 250cc. Motorcycles below 250cc were 'finished goods' that were 'exempted goods', *ie*, sales tax at the sale stage of those motorcycles below 250cc are exempted pursuant to Sales Tax (Goods Exempted from Tax) Order 2018 ('PU(A) 219') and the Sales Tax (Goods Exempted from Tax) (Amendment) Order 2018 ('PU(A) 228'). The exemption certificate dated 30 August 2018 was self-generated by Yamaha Motors under Item 1, Schedule C of PU(A) 210 ('Exemption Order'). Yamaha Motors had been using this exemption certificate which contained the express condition that the exemption was only meant for import of components to produce taxable finished goods, on numerous occasions of Customs Declaration for the import of components to assemble tax exempted finished goods instead (for motorcycles below 250cc). The appellant's stand was that the said tax exemption applied only to 'finished goods' which were 'taxable' and since motorcycles below 250cc were finished goods that were tax exempted, Yamaha Motors was not entitled to tax exemption under Item 1 Schedule C of the Exemption Order. As a result, the appellant found that there was sales tax due and payable by Yamaha Motors for various motorcycle components which were imported and purchased by Yamaha Motors in the period between September 2018 and July 2019, to be used in its manufacturing of motorcycles below the engine capacity of 250cc. For this, according to the appellant, Yamaha was not entitled to tax exemption under Item 1, Schedule C of PU(A) 210. Following an audit exercise on the returns filed by Yamaha Motors for the relevant period, three tranches of bills of demand were issued by the appellant, pursuant to s. 38 of the Act 806. These bills of demands formed the subject matter of three cases filed for applications for judicial review at the High Court by Yamaha Motors. The

three applications were consolidated. The High Court dismissed the application but Yamaha Motors was successful in its appeal at the Court of Appeal. Hence, the present appeal by the appellant. The questions of law that arose were: (i) whether a 'registered manufacturer' who manufactures both 'taxable finished product, and 'tax exempted finished product' was entitled to claim exemption for taxable raw materials imported for the manufacturing of 'tax exempted finished product' under Item 1, Schedule C of PU(A) 210, having regard to ss. 2, 8, 12, 13, 35(1)(a) and 35(1)(b) of the Sales Tax Act 2018, read together with PU(A) 219 and PU(A) 228 ('question (i)'); (ii) whether the law enunciated by the English Court of Appeal in *Littman v. Barron* that 'the principle that in case of ambiguity a taxing statute should be construed in favour of a taxpayer does not apply to a provision giving a taxpayer relief in certain cases from a section clearly imposing liability' should apply in Malaysia ('question (ii)'); or (iii) whether the law enunciated by the English House of Lords in *Ben-Odeco Ltd v. Powlson (Inspector of Taxes)* that in the case of a provision affording relief from tax, 'the taxpayer must persuade me that he is within it. If the reasons pro and con were in the precise balance, the taxpayer on that basis would lose' should apply in Malaysia ('question (iii)').

Held (allowing appeal)

Per Zabariah Mohd Yusof FCJ delivering the judgment of the court:

(1) For manufacturers of motorcycles below 250cc which are 'tax exempted finished goods', these manufacturers are not a 'registered manufacturer' that fall within the Exemption Order under Item 1 of Schedule C of PU(A) 210. In other words, Yamaha Motors was not a registered manufacturer for motorcycles below 250cc. The condition imposed, which stipulated that the 'finished goods', as envisaged under Item 1 of Schedule C of the Exemption Order must be 'taxable goods' was consistent with the definition of 'registered manufacturer' under s. 2(1) of the Act 806, which refers to ss. 12 and 13 of the same which, in turn, is expressly confined to 'manufacturer of taxable goods'. (paras 64 & 67)

(2) The condition for eligibility under Item 1 Schedule C of the Exemption Order that the 'finished 'goods' must be taxable goods is expressly stated as 'syarat ketiga' in the exemption certificate dated 30 August 2018 generated and printed out by Yamaha Motors themselves. The said 'syarat ketiga' expressly prescribed that 'Bahan mentah, komponen dan bahan pembungkusan itu hendaklah digunakan dalam aktiviti pengilangan barang siap bercukai pengilang berdaftar'. Since the condition was expressly mentioned in the exemption certificate generated, printed out and used by Yamaha Motors on all the purchases, they were deemed to be aware of the condition stipulated. (para 70)

(3) Yamaha Motors had utilised the tax exemption under Item 1 of Schedule C of the Exemption Order, as evinced in the import declaration form for the components purchased and the exemption certificate which expressly referred to Item 1, Schedule C and not the so-called Minister's exemption. Therefore, Yamaha Motors cannot now seek to rely on the said Minister's letters. In any event, the same condition that the 'finished goods' must be 'taxable goods' was imposed and expressly mentioned in the Minister's letter dated 8 May 2019. (para 72)

(4) Item 1, Schedule C of PU(A) 210 provides exemption on taxable raw material or component used for production by a 'registered manufacturer' (as in the case of motorcycle above 250cc). Item 4, Schedule B of PU(A) 210, on the other hand, also provided the same exemption but it confined the eligibility to manufacturers of exempted goods (as in the case of motorcycles below 250cc) that the exempted goods were for export. Hence, only locally manufactured motorcycles below 250cc, which were meant for export purpose was eligible to claim for exemption under Item 4, Schedule B of PU(A)210. (paras 74 & 75)

(5a) The Court of Appeal had erred in several aspects. Bearing in mind the principles governing the interpretation of tax relief/exemption provisions, the Court of Appeal, in its interpretation of the provisions in Schedule C of PU(A) 210, made no distinction between tax-charging provision/statute from one which provides relief or exemption from tax. In this context, the Court of Appeal leaned towards a literal interpretation from a purposive interpretation, even when it was obvious that the outcome of such literal construction of the exemption would invariably lead to a situation of over-inclusiveness which was not intended by the exemption, which subsequently leads to absurd consequences. (para 78)

(5b) The approach of interpretation adopted by the Court of Appeal was not in tandem with the current judicial trend in the UK (and by extension the European Union) as well as Australia. In arriving at its decision, the Court of Appeal had erroneously adopted a wider interpretation on the words 'finished goods' in condition (c) of Item 1, Schedule C of PU(A) 210 when it interpreted that 'finished goods' in the same included both 'taxable finished goods' and 'tax exempted goods'. (paras 79 & 80)

(6) The provisions were clear with no ambiguity. Item 1, Schedule C of PU(A) 210 ought not to be read *in vacuo* or in isolation of all other Items of exemptions prescribed within the same Exemption Order.

Question (i) was answered in the negative while questions (ii) and (iii) were answered in the positive. The decision of the Court of Appeal, including costs, was set aside and the decision of the High Court was reinstated. (paras 93 & 94)

Bahasa Melayu *Headnotes*

Yamaha Motors adalah pengilang berdaftar menurut maksud Akta Cukai Jualan 2018 ('Akta 806') dan Jadual bawah Perintah Cukai Jualan (Orang Yang Dikecualikan Daripada Pembayaran Cukai) 2018 ('PU(A) 210'). Yamaha Motors telah mengimport pelbagai komponen bagi pemasangan motosikal di kilang. Yamaha Motors juga adalah pemegang francais untuk pengilang pemasangan tempatan untuk motosikal-motosikal Yamaha (bawah dan atas 250cc). Pemegang francais tidak termasuk dalam ruang lingkup pemakaian Akta 806 dan PU(A) 210. Dalam konteks percukaian, 'pemegang francais' tidak layak memohon pengecualian bawah PU(A) 210. Oleh kerana PU(A) 210 tidak terpakai pada pemegang francais, pihak Kerajaan telah menyediakan pengecualian cukai yang serupa untuk mereka melalui instrumen-instrumen yang berbeza, iaitu tiga surat Kementerian yang dikeluarkan oleh Menteri berdasarkan kuasa statutorinya untuk memberikan pengecualian ('pengecualian Menteri'). Yamaha Motors telah menghasilkan dan memanfaatkan satu sijil pengecualian bertarikh 30 Ogos 2018 bagi mengimport komponen-komponen motosikal untuk pemasangan motosikal-motosikal Yamaha berkapasiti bawah 250cc. Motosikal-motosikal bawah 250cc adalah 'barang siap', seterusnya 'barang tidak bercukai', iaitu, pada peringkat penjualan motosikal-motosikal bawah 250cc itu, berdasarkan Perintah Cukai Jualan (Barang Dikecualikan Daripada Cukai) 2018 dan Perintah Cukai Jualan (Barang Dikecualikan Daripada Cukai) (Pindaan) 2018, motosikal-motosikal itu tidak dikenakan cukai jualan. Sijil pengecualian bertarikh 30 Ogos 2018 telah dihasilkan sendiri oleh Yamaha Motors menurut Item 1, Jadual C PU(A) 210 ('perintah pengecualian'). Sijil pengecualian ini mengandungi syarat nyata bahawa pengecualian hanya disediakan untuk pengimportan komponen-kompenan untuk pembuatan barang siap bercukai. Akan tetapi, Yamaha Motors, dalam beberapa pengisytiharan Kastam, telah menggunakan sijil pengecualian itu untuk mengimport komponen-komponen bagi pemasangan barang siap tidak bercukai (motosikal-motosikal bawah 250cc). Menurut perayu, pengecualian cukai tersebut hanya terpakai untuk 'barang siap' yang 'boleh dikenakan cukai'. Oleh kerana motosikal-motosikal bawah 250cc adalah barang siap yang diberikan pengecualian cukai, Yamaha Motors tidak berhak memohon pengecualian cukai bawah Item 1, Jadual C perintah pengecualian. Berikutan itu, perayu mendakwa bahawa komponen-komponen motosikal yang diimport dan dibeli oleh Yamaha Motors dalam tempoh September 2018 hingga Julai 2019, bagi pembuatan motosikal-motosikal berkapasiti enjin bawah 250cc, mempunyai tunggakan cukai jualan yang perlu diselesaikan

oleh Yamaha Motors. Oleh itu, menurut perayu, Yamaha Motors tidak berhak mendapatkan pengecualian cukai bawah Item 1, Jadual C PU(A) 210. Susulan pelaksanaan audit terhadap pulangan-pulangan yang difailkan oleh Yamaha Motors bagi tempoh yang berkaitan, bil-bil tuntutan, melalui tiga bahagian, telah dikeluarkan oleh perayu menurut s. 38 Akta 806. Bil-bil tuntutan tersebut membentuk hal perkara tiga permohonan yang difailkan oleh Yamaha Motors di Mahkamah Tinggi untuk semakan kehakiman. Ketiga-tiga permohonan itu kemudian digabungkan. Maka timbul rayuan ini oleh perayu. Soalan-soalan undang-undang yang timbul adalah: (i) sama ada, mengambil kira ss. 2, 8, 12, 13, 35(1)(a) dan 35(1)(b) Akta Cukai Jualan 2018 dibaca bersama-sama PU(A) 219 dan PU(A) 228, 'pengilang berdaftar' yang mengeluarkan kedua-dua 'barang siap bercukai' dan 'barang siap tidak bercukai' berhak menuntut pengecualian cukai untuk bahan-bahan mentah bercukai yang diimport bagi pembuatan 'barang siap tidak bercukai' menurut Item 1, Jadual C PU(A) 210 ('soalan (i)'); (ii) sama ada undang-undang seperti yang dinyatakan oleh Mahkamah Rayuan Inggeris dalam *Littman v. Barron*, iaitu, prinsip jika terdapat kekaburan, statut percukaian hendaklah ditafsir memihak pembayar cukai, tetapi prinsip itu tidak terpakai pada peruntukan yang memberikan pengecualian pada pembayar cukai dalam kes-kes yang melibatkan seksyen yang secara jelas mengenakan tanggungan', terpakai di Malaysia ('soalan (ii)'); atau (iii) sama ada undang-undang yang dinyatakan oleh Dewan Pertuanan Inggeris dalam *Ben-Odeco Ltd v. Powlson (Inspector of Taxes)*, iaitu dalam kes di mana peruntukan telah memberikan pengecualian cukai, 'pembayar cukai mestilah meyakinkan mahkamah bahawa dia juga termasuk dalam ruang lingkup peruntukan itu, jika alasan-alasan secara pro dan kontra sangat seimbang, pembayar cukai akan kalah', terpakai di Malaysia ('soalan (iii)').

Diputuskan (membenarkan rayuan)

Oleh Zabariah Mohd Yusof HMP menyampaikan penghakiman mahkamah:

(1) Bagi pengilang motosikal-motosikal bawah 250cc, iaitu 'barang siap tidak bercukai', pengilang-pengilang ini bukan 'pengilang berdaftar' yang terangkum bawah perintah pengecualian bawah Item 1, Jadual C PU(A) 210. Dalam erti kata lain, Yamaha Motors bukan pengilang berdaftar bagi motosikal-motosikal bawah 250cc. Syarat yang dikenakan, iaitu 'barang siap' menurut takrifan Item 1, Jadual C perintah pengecualian mestilah ditakrif sebagai 'barang bercukai, adalah konsisten dengan definisi 'pengilang berdaftar' bawah s. 2(1) Akta 806, yang turut merujuk pada ss. 12 dan 13 Akta sama, tetapi secara nyata terhad pada 'pengilang barang bercukai'.

(2) Syarat kelayakan bawah Item 1, Jadual C perintah pengecualian, bahawa 'barang siap' hendaklah ditakrif sebagai barang bercukai telah secara jelas dinyatakan sebagai 'syarat ketiga' dalam sijil pengecualian bertarikh 30 Ogos 2018 yang dihasilkan dan dicetak oleh Yamaha

Motors sendiri. 'Syarat ketiga' secara nyata mengatakan bahawa 'Bahan mentah, komponen dan bahan pembungkusan itu hendaklah digunakan dalam aktiviti pengilangan barang siap bercukai pengilang berdaftar'. Memandangkan syarat itu secara nyata termaktub dalam sijil pengecualian yang dihasilkan, dicetak dan digunakan oleh Yamaha Motors bagi semua pembelian, Yamaha Motors boleh dikatakan sedar akan syarat tersebut.

(3) Yamaha Motors telah memanfaatkan pengecualian cukai menurut Item 1 Jadual C perintah pengecualian, seperti yang dilihat melalui borang deklarasi import bagi komponen-komponen yang dibeli dan sijil pengecualian yang secara nyata merujuk pada Item 1, Jadual C dan bukan pada pengecualian Menteri. Oleh itu, Yamaha Motors tidak boleh bergantung pada surat-surat daripada Menteri itu. Walau apa pun, syarat yang serupa, iaitu 'barang siap' mestilah ditakrif sebagai 'barang bercukai', dikenakan. Pengenaan itu telah secara nyata disebut dalam surat Menteri bertarikh 8 Mei 2019.

(4) Item 1, Jadual C PU(A) 210 memberikan pengecualian pada bahan mentah bercukai atau komponen yang digunakan untuk pembuatan oleh 'pengilang berdaftar' (seperti motosikal bawah 250cc). Item 4, Jadual B PU(A) 210 pula, sebaliknya, memberikan pengecualian yang serupa, namun, itu terhad pada kelayakan pengilang-pengilang barang tidak bercukai (seperti motosikal bawah 250cc) bagi tujuan eksport. Maka, hanya motosikal-motosikal bawah 250cc yang dikilangkan secara tempatan atas tujuan eksport layak bagi tuntutan pengecualian bawah Item 4, Jadual B PU(A) 210.

(5a) Mahkamah Rayuan terkhilaf dalam beberapa aspek. Mengambil kira tafsiran terhadap peruntukan-peruntukan berkaitan pelepasan/pengecualian cukai, tafsiran Mahkamah Rayuan bagi peruntukan-peruntukan bawah Jadual C PU(A) 210, tidak membezakan antara peruntukan/Akta yang mengenakan cukai dengan peruntukan/Akta yang menyediakan pelepasan atau pengecualian cukai. Mengikut konteks tersebut, Mahkamah Rayuan lebih cenderung pada tafsiran secara harfiah dan bukan tafsiran secara purposif, walaupun jelas tafsiran sebegitu bakal mendatangkan keadaan di mana ruang lingkup pengecualian akan diluaskan secara berlebihan, sedangkan itu bukan tujuan asalnya. Tafsiran sebegitu akan menyebabkan akibat-akibat yang tidak masuk akal.

(5b) Pendekatan yang diambil oleh Mahkamah Rayuan tidak seiring dengan trend penghakiman semasa di UK (serta Kesatuan Eropah) dan Australia. Dalam mencapai keputusannya, Mahkamah Rayuan telah terkhilaf melalui penggunaan tafsiran yang lebih luas bagi perkataan-perkataan 'barang siap' dalam syarat (c), Item 1, Jadual C PU(A) 210 apabila mahkamah mentafsirkan 'barang siap' untuk turut meliputi 'barang siap bercukai' dan 'barang siap tidak bercukai'.

(6) Peruntukan-peruntukan adalah jelas tanpa kekaburan. Item 1, Jadual C PU(A) 210 tidak sepatutnya dibaca secara *in vacuo* atau berasingan daripada item-item lain berkaitan pengecualian yang terdapat dalam perintah pengecualian. Soalan (i) dijawab secara negatif, manakala soalan-soalan (ii) dan (iii) dijawab secara positif. Keputusan Mahkamah Rayuan, termasuk kos, diketepikan. Keputusan Mahkamah Tinggi dikembalikan.

Case(s) referred to:

Ben-Odeco Ltd v. Powlson (Inspector of Taxes) [1978] STC 460 ***(refd)***

Brayson Motors Pte Ltd v. Federal Commissioner of Taxation [1985] 59 ALR 265 ***(refd)***

C R Smith Glaziers (Dunfermline) Ltd v. Customs And Excise Commissioners [2003] STC 419 ***(refd)***

CCE v. Hari Chand Shri Gopal [2011] 1 SCC 2346 ***(refd)***

Commissioner of Customs (Import), Mumbai v. Dilip Kumar And Co And Ors [2018] 9 SCC 1 ***(refd)***

Commissioner of Inland Revenue v. Saxone Lilley & Skinner (Holdings) Ltd [1967] SC (HL) 1 ***(refd)***

Cooper Brookes (Wollongong) Pty Ltd v. Commissioner Of Taxation [1981] 35 ALR 151 ***(refd)***

Estee Lauder Pty Ltd v. Federal Commissioner of Taxation [1988] 80 ALR 314 ***(refd)***

Expert Witness Institute v. Customs And Excise Comsrs [2001] EWCA Civ 1882 ***(refd)***

Extendicare Ltd And Borough Of North York et al 27 OR (2d) 9 ***(refd)***

Foo Loke Ying & Anor v. Television Broadcasts Ltd & Ors [1985] 1 CLJ 511; [1985] CLJ (Rep) 122 SC ***(refd)***

JAW & S Property Management Nominees Pty Ltd v. Commissioner Of Stamp Duties [1989] 1Qd R 530 ***(refd)***

Ketua Pengarah Hasil Dalam Negeri v. Kualiti Alam Sdn Bhd [2017] CLJU 330; [2017] 1 LNS 330 HC ***(refd)***

Krishnadas Achutan Nair & Ors v. Maniyam Samykano [1997] 1 CLJ 636 FC ***(refd)***

Littman v. Barron (Inspector of Taxes) [1951] 2 All ER 393 ***(refd)***

Moulsdale t/a Moulsdale Properties v. Revenue And Customs Comsrs (Scotland) [2023] UKSC 12 ***(refd)***

Multi-Purpose Holdings Berhad v. Ketua Pengarah Hasil Dalam Negeri [2006] 2 MLJ 498 ***(refd)***

National Land Finance Co-operative Society Ltd v. Director General of Inland Revenue [1993] 4 CLJ 339 SC ***(refd)***

News Corp UK & Ireland Ltd v. Revenue And Customs Comsrs [2023] UKSC 7 ***(refd)***

Oriental Bank Corporation v. Wright [1880] 5AC 842 ***(refd)***

Palm Oil Research And Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd [2004] 2 CLJ 265 FC ***(refd)***

Re Micklewait [1855] 11 Exch 452 ***(refd)***

Sandur Circuits Ltd v. CCE, Belgaum (Civil Appeal No. 7177 of 2005) ***(refd)***

Seruntun Maju Sdn Bhd v. Pengarah Kastam Negeri Perak, Jabatan Kastam Diraja Malaysia & Anor [2020] CLJU 925; [2020] 1 LNS 925 CA ***(refd)***

State Transport Authority v. Corporation Of City Of Adelaide [1980] 24 SASR 481 ***(refd)***

Syarikat Pendidikan Staffield Bhd v. Ketua Pengarah Hasil Dalam Negeri [2011] 5 CLJ 916 HC ***(refd)***

Target Group Ltd v. Revenue and Customs Comsrs [2023] UKSC 35 ***(refd)***

The Camille And Henry Dreyfus Foundation, Inc v. Commissioners of Inland Revenue 36 TC 126 ***(refd)***

Union Corporation Ltd v. Inland Revenue Commissioners [1953] AC 482 ***(refd)***

Legislation referred to:

Customs Act 1967, s. 65D(3)

Sales Tax (Persons Exempted from Payment of Tax) Order 2018, Schedule A items 35, 66, Schedule B item 4, Schedule C items 1, 5

Sales Tax (Persons Exempted from Payment of Tax) (Amendment) Order 2022, s. 4

Sales Tax Act 2018, ss. 2(1), 8(1)(a), 12(2), 13, 35(1)(a), (b), 38

Sales Tax Assessment Act (No 1) 1930 [Aus], s. 3

Other source(s) referred to:

Bennion, Bailey And Norbury On Statutory Interpretation, 8th edn, pp 711 to 715, 777 to 778

Daniel Greenberg CB, *Craies on Legislation*, (2025), 13th edn, [1097]-[1107]

Justice GP Singh, *Principles of Statutory Interpretation on Tax Exemption Interpretation*, 14th edn, p 908

For the appellant - Rahazlan Affandi Abdul Rahim, Liew Horng Bin; SFCs & Nur Atirah Aiman Rahim; FC

For the respondent - S Saravana Kumar, Lim Chinn Wei & Dharshini Sharma; M/s Rosli Dahlan Saravana Partnership

[Editor's note: Appeal from Court of Appeal; Civil Appeal No: B-01(A)-873-12-2022 (overruled); Appeal from High Court, Shah Alam; Judicial Review No: BA-25 5-01-2020 (affirmed).]

Reported by Lina E & Syamim Ariffin

JUDGMENT

Zabariah Mohd Yusof FCJ:

[1] The appeal herein originated from a judicial review application filed by the respondent herein (hereinafter referred to as "Yamaha Motors") in the High Court against the decision of the Ketua Pengarah Jabatan Kastam DiRaja Malaysia (hereinafter referred to as "the appellant"). The judicial review application is in relation to the decision of the appellant in the interpretation of the provisions of the Sales Tax Act 2018 (hereinafter referred to as "Act 806") and the Schedule of the Sales Tax (Persons Exempted From Payment of Tax) Order 2018 (PU(A) 210).

[2] The High Court dismissed the application of judicial review by Yamaha Motors. Aggrieved Yamaha Motors appealed to the Court of Appeal, which was allowed.

[3] The appellant filed a notice of application for leave to appeal to this court against the decision of the Court of Appeal, which was allowed upon the following three questions of law:

(i) whether a "registered manufacturer" who manufactures both "taxable finished product" and "tax-exempted finished product" is entitled to claim exemption for taxable raw materials imported for the manufacturing of "tax exempted finished product" under Item 1, Schedule C of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 (PU(A) 210), having regard to ss. 2, 8, 12, 13, 35(1)(a) and 35(1)(b) of the Sales Tax Act 2018, read together with Sales Tax (Goods Exempted from Tax) Order 2018 (PU(A) 219) and Sales Tax (Goods Exempted from Tax) (Amendment) Order 2018 (PU(A) 228);

(ii) whether the law enunciated by the English Court of Appeal in *Littman v. Barron (Inspector of Taxes)* [1951] 2 All ER 393 per Cohen LJ that 'the principle that in case of ambiguity a taxing statute should be construed in favour of a taxpayer does not apply to a provision giving a taxpayer relief in certain cases from a section clearly imposing liability' should apply in Malaysia; or

(iii) whether the law enunciated by the English House of Lords in *Ben-Odeco Ltd v. Powlson (Inspector of Taxes)* [1978] STC 460 per Lord Russell that in the case of a provision affording relief from tax, 'the taxpayer must persuade me that he is within it. If the reasons pro and con were in precise balance, the taxpayer on that basis would lose' should apply in Malaysia.

[4] After hearing and considering the submissions and authorities from both parties and perusing through the records of appeal together with the grounds of judgment of the High Court and the Court of Appeal, we unanimously allowed the appeal by the appellant with no order as to costs. Hereinbelow are our reasons for the said decision.

Background Facts

[5] Yamaha Motors, which is the taxpayer, is a registered manufacturer within the meaning of Act 806 and the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 (hereinafter referred to as "PU(A) 210").

[6] Yamaha Motors imports various components for motorcycles and has them assembled at the factory.

[7] Yamaha Motors is also a franchise holder of locally assembled manufacturer for Yamaha motorcycles (below 250cc and above 250cc). Franchise holders are not covered by Act 806 and PU(A) 210).

[8] The distinction between a manufacturer and a franchise holder, is that, a franchise holder need not have a physical manufacturing plant.

[9] In the context of tax treatment, a "franchise holder" is not eligible to claim for the exemption under PU(A) 210.

[10] Due to franchise holder not being covered under PU(A) 210, the Government extended the same tax relief to a franchise holder through different instrument, namely by three Ministerial letters issued by the Minister in the exercise of his statutory powers to exempt (Minister's exemption).

[11] Therefore, in effect, there are two types of exemptions:

(i) exemption under PU(A) 210 for "registered manufacturer"; and

(ii) exemption given *vide* three Ministerial letters/Minister's exemption for a "franchise holder".

[12] Yamaha Motors had generated and utilised an exemption certificate dated 30 August 2018 to import components for the assembly of Yamaha motorcycles below 250cc. Motorcycles below 250cc are 'finished goods' that are 'exempted goods', *ie*, sales tax at the sales stage of those motorcycles below 250cc are exempted pursuant to Sales Tax (Goods Exempted from Tax) Order 2018 (hereinafter referred to as "PU(A) 219") and Sales Tax (Goods Exempted from Tax) (Amendment) Order 2018 (hereinafter referred to as "PU(A) 228").

[13] The exemption certificate dated 30 August 2018 was self-generated by Yamaha Motors under Item 1, Schedule C of PU(A) 210) ('Exemption Order').

[14] The said Exemption Order set out various qualifications, which included condition (e) which provides 'any other conditions the Director General deems fit to impose'.

[15] The condition for eligibility under Item 1, Schedule C of the Exemption Order is that the 'finished goods' must be 'taxable goods' which was expressly stated as "condition 3" in the exemption certificate dated 30 August 2018 which was generated and printed out by Yamaha Motors themselves. The said "condition 3" expressly prescribed that:

> The raw materials, components and packaging materials shall be used solely in the manufacturing of **the finished taxable goods of the registered manufacturer**.
>
> (emphasis added)

[16] However, Yamaha Motors has been using this exemption certificate which contains the express condition that the exemption was only meant for import of components to produce taxable finished goods, on numerous occasions of customs declaration for the import of components to assemble tax exempted finished goods instead (for motorcycles below 250cc).

[17] The stand of the appellant is that the said tax exemption applies only to "finished goods" which are "taxable". Since motorcycles below 250cc are finished goods that are tax exempted, Yamaha Motors is not entitled to tax exemption under Item 1, Schedule C of the Exemption Order for taxable raw materials and components imported or purchased to be used in the assembly of the said motorcycles.

[18] As a result, the appellant found that there was sales tax due and payable by Yamaha Motors for various motorcycle components which were imported and purchased by Yamaha Motors in the period between September 2018 and July 2019, to be used in its manufacturing of motorcycles below the engine capacity of 250cc. For this, Yamaha Motors is not entitled to tax exemption under Item 1, Schedule C of PU(A) 210.

[19] Having conducted an audit exercise on the returns filed by Yamaha Motors for the relevant period, three tranches of bills of demand were issued by the appellant pursuant to s. 38 of the Act 806. These bills of demand form the subject matter of three cases filed for applications for judicial review in the High Court for which Yamaha Motors was seeking for, *inter alia*, orders of *certiorari* to quash the decisions of the appellant. The three applications were consolidated by order of the High Court with the last case, namely BA-25-05-01/2020 being considered as the principal case. The facts and the prayers as well as the grounds of challenge all being identical in all the three cases. The appeal before us is in relation to the case of BA-25-05-01/2020.

Yamaha Motor's Pleaded Reliefs

[20] The reliefs prayed for by Yamaha Motors in the judicial review application before the High Court are as follows:

(i) a *certiorari* to quash the impugned bills of demand which were issued by the appellant to Yamaha Motors for the three cases; and

(ii) a declaration that the term "finished goods" in Item 1, Schedule C of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 (PU(A) 210) ('Exemption Order') shall not be limited to taxable goods only but should include "non-taxable goods".

[21] It is to be noted that when Yamaha Motors refers to "non-taxable goods" it actually refers to "exempted goods". In other words, it refers to tax exempted goods. Nowhere in the Act 806 is the words "non-taxable goods" referred to. The correct term is "exempted goods" as per the Act 806. The terms "taxable finished goods" and "tax exempted finished goods" are not expressly stipulated in the Exemption Order. Yamaha Motors used the terms "taxable finished goods" and "non-taxable finished goods" in its application for the relief sought.

A

The Complaints By Yamaha Motors

[22] In the judicial review applications, the complaints of Yamaha Motors are that they had fulfilled all the conditions as required under the so-called 'Minister's exemption' conveyed in two letters dated 26 September 2018 and 15 October 2018 issued to a 'franchise holder', in that:

B

(i) the components were approved by the appellant;

(ii) the components were imported from another manufacturer or a warehouse licensed under the Customs Act 1967;

C

(iii) the components were used solely in the manufacturing or assembly of the Yamaha Motorcycles, which are 'finished goods';

(iv) the Minister has approved Yamaha Motors as one of the companies in the motorcycle assembly industry that can rely on the 'Minister's exemption'; and

D

(v) the importation or purchase of the components by the Yamaha Motors took place during the period in which the 'Minister's exemption' was effective.

[23] Yamaha Motors claimed that they had satisfied all the conditions under Item 1, Schedule C of PU(A) 210 ('Exemption Order'), in that:

E

(i) the components imported for the Yamaha motorcycles were approved by the appellant; and

(ii) Yamaha Motors has received an exemption certificate issued by the appellant dated 30 August 2018.

F

[24] It is for the aforementioned pleaded grounds that Yamaha Motors claimed that the appellant's decision was said to be:

(i) *ultra vires*, illegal, void, unlawful and/or in excess of authority;

(ii) irrational and/or unreasonable; and

G

(iii) disregarded the legitimate expectations of Yamaha Motors.

[25] However, the main grounds of challenge by Yamaha Motors are that:

(i) the appellant had failed to consider the purpose of the Minister's exemption and Exemption Order in arriving at the decision;

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(ii) in dealing with issues involving a tax exemption granted by the Minister, the appellant must have regard to the Minister's underlying purpose for granting the exemption (see *Syarikat Pendidikan Staffield Bhd v. Ketua Pengarah Hasil Dalam Negeri* [2011] 5 CLJ 916);

I

(iii) the purpose of the Minister's exemption and Exemption Order is clearly to ensure that the prices of the "finished goods" would not be affected by any sales tax which may be imposed on the raw materials or

components used in the process of manufacturing the "finished goods". It is therefore not the Minister's intention to limit the definition of "finished goods" to taxable goods only; and

(iv) the appellant's decision would result in a hike in the prices of the Yamaha motorcycles which is clearly contrary to the underlying purpose of the Minister's exemption and the Exemption Order.

The High Court Proceedings

[26] The learned High Court Judge (HCJ) dismissed all three applications for judicial review premised upon the following grounds:

(i) whether the appellant has any legal basis to impose additional condition by limiting the term "finished goods" under PU(A) 210 to only taxable "finished goods":

(a) condition (c) Item 1, Schedule C of PU(A) 210 stipulates "that the goods should be used solely in the manufacturing of "finished goods" by the person listed in column (2);

(b) the first page of the certificates under the Exemption Order which the learned High Court Judge referred to as "the exemption certificates", which were provided by the customs authority to Yamaha Motors, states that:

> I hereby certify that the raw materials, components, packaging materials and manufacturing aids as described in the Appendix are imported/purchased with exemption from sales tax under Item 1 Schedule C, of PU(A) 210, for use in the manufacture of goods, subject to the conditions specified by the Director General.

(c) further, there were several conditions imposed by the appellant in the second page of the exemption certificates, particularly condition no. 3, which states:

> The raw materials, components and packaging materials shall be used solely in the manufacturing of the finished taxable goods of the registered manufacturer;

(d) the question is whether the condition no. 3 imposed by the appellant is beyond the provision of the Exemption Order;

(ii) whether the word "taxable" before the words "finished goods" which does not appear in Item 1, Schedule C of PU(A) 210 means that the finished goods were not taxable.

The HCJ held as follows:

(a) the Exemption Order must be read as a whole, including together with the Act from which it derives its powers from. Section 35 of the Act 806 is the enabling provision of the Exemption Order, allowing the Minister to legislate the Exemption Order;

(b) as submitted by the Senior Federal Counsel, by definition under s. 2 of the Act 806 read together with s. 12 of the same, a 'registered manufacturer' is one who manufactures 'taxable goods' who is liable to be registered under s. 13 of the same Act;

(c) hence, Yamaha Motors was well aware that the Exemption Order stated finished taxable goods;

(d) in the event the goods were not taxable, there was no necessity for Yamaha Motors to register for tax exemption under Act 806;

(e) moreover, Item 1, Schedule C of PU(A) 210 allows the appellant to impose other conditions as the appellant deems fit; and

(f) therefore, the learned High Court Judge found that this ground was without merit;

(iii) whether the appellant has any legal basis to impose additional condition based on the guide issued by the Royal Malaysian Customs Department ("the guide"):

(a) Paragraph 6 of the guide provides that:

> Condition for exemption under Item 1 and 2, Schedule C, of PU(A) 210 are:
>
> ...
>
> (c) The goods shall be used solely in the manufacturing of taxable finished goods; and

(b) relying on the Court of Appeal case of *Multi-Purpose Holdings Berhad v. Ketua Pengarah Hasil Dalam Negeri* [2006] 2 MLJ 498, Yamaha Motors submitted that the guide does not have a force of law and hence, the appellant cannot rely on the guide to impose the taxes. It was further submitted that the guide dated 24 April 2019 cannot be applied as the Exemption Order was gazetted on 28 August 2018. The learned High Court Judge agreed with the contention of Yamaha Motors that the guide remains as a guide. It is to assist one in carrying out a task. It is not law and does not have the enforceability of legislation or regulation. Nonetheless, the Exemption Order and the exemption certificate were sufficient grounds for the appellant to impose the tax *via* the bills of demand issued. The exemption certificate clearly stated "finished taxable goods of the registered manufacturer".

Proceedings In The Court Of Appeal

[27] Dissatisfied, Yamaha Motors appealed to the Court of Appeal (COA), which allowed Yamaha Motors' appeal, set aside the High Court order dated 6 December 2022 and granted orders in term of prayers (I)(A) (*ie*, *certiorari* orders) and (II)(B) (*ie*, declarations) of the three judicial review applications, based on the following grounds:

(i) pursuant to ss. 2, 12 and 13 of the Act 806, the COA observed that there are two qualifications for a manufacturer to be liable to be registered as a registered manufacturer under the Act, among others, the first qualification is that the manufactured goods must be taxable goods. However, in the present case, Yamaha Motors is a registered manufacturer under the Act, and yet, its finished goods, *ie*, motorcycles below 250cc, are non-taxable finished goods. It is legally comprehensible for Yamaha Motors to be registered as a registered manufacturer under the Act, and to be also manufacturing non-taxable finished goods. Therefore, focusing on ss. 12 and 13 of the Act as the reason for Yamaha Motors to be liable to pay the sales tax was not justifiable. On this score, the COA was of the view that the High Court Judge's reasoning was flawed;

(ii) the learned High Court Judge presupposed Yamaha Motors to be fully aware that the "finished goods" referred to in the Exemption Order referred to "finished taxable goods", otherwise, Yamaha Motors would not have to register for tax exemption under the Act. The COA was of the view that this presupposition is erroneous because:

(a) Item 1, condition (c), column 4, of Schedule C did not state "finished taxable goods", it clearly stated "finished goods". It could mean both tax exempted finished goods as well as finished taxable goods. The words were clear, unambiguous, unqualified and plain enough to be given a literal interpretation; and

(b) the exemption certificates for exemption of sales tax were meant for the imported goods, which were for the manufacture of finished goods. Therefore, these certificates would not necessarily lead to the conclusion that the finished goods must be finished taxable goods;

(iii) the learned High Court Judge opined that "Item 1, Schedule C" (presumably referring to condition (e), column (4), Item 1, Schedule C) allowed the appellant to impose other conditions as the appellant deemed fit. As such, condition no. 3 was legally imposed by the appellant in the exemption certificate. The COA found that the learned High Court Judge had erred in accepting that condition (e) of column (4) could empower the appellant to have such vast power to change the wording in the Exemption Order by rewording them as in condition no. 3 because:

(a) although the appellant was permitted to impose any conditions, the conditions imposed must be other than those conditions which have already been stated in column (4). It stated clearly "any other conditions". Hence, the appellant has no power to add or remove word(s) in those conditions which have already been stated in

column (4) conditions. Schedule C was a *Gazette* order and has been passed through proper legislation. If there is any change, it has to be done through proper legislation too;

(b) the appellant could not impose an additional condition by limiting the meaning of the words "finished goods" to mean "finished taxable goods". The former carries a very different connotation from the latter. The power granted to the appellant could not be extended to changing the original words, or adding word(s) into the original words, in Schedule C. This prohibition is more so when the modification would lead to a substantial change of the meaning; and

(c) if the drafters intended the words "finished goods" to mean "finished taxable goods" in Item 1 of Schedule C, they could have done so like in other parts of the Schedules, for examples, Item 5 of Schedule C: "finished taxable goods", Items 35 and 66 of Schedule A: "taxable goods". It was held that "Parliament does nothing in vain, the court must endeavour to give significance to every word of an enactment, and it is presumed that if a word or phrase appears in a statute, it was put there for a purpose and must not be disregarded" (see *Foo Loke Ying & Anor. v. Television Broadcasts Ltd & Ors* [1985] 1 CLJ 511; [1985] CLJ (Rep) 122; *Krishnadas Achutan Nair & Ors. v. Maniyam Sanykano* [1997] 1 CLJ 636; [1997] 1 MLJ 94);

(iv) on 15 October 2018, the Ministry of Finance issued a letter ("the Minister of Finance's letter") to the appellant, informing that the Minister of Finance's decision in agreeing to approve the exemption of sales tax to companies, which held the franchise for manufacturing vehicles locally, for vehicle components that were imported or purchased from the local registered manufacturer or licensed warehouse, for the period from 1 September 2018 to 31 August 2019. Yamaha Motors was one of those approved franchise holders in "Lampiran A" for the category of motorcycle. It then relied on this approval by the Ministry of Finance to seek exemption of payment of sales tax for the goods for the purpose of manufacture of its finished goods. The Minister of Finance's letter did not limit or specify the finished goods must be finished taxable goods. Therefore, this right could not be modified by the appellant at his whim by qualifying the plain language used in the appellant's letter and the law. Notwithstanding that, even if there was a doubt or ambiguity, then such doubt or ambiguity "must be construed in favour of the taxpayer". (see *National Land Finance Co-operative Society Ltd. v. Director General of Inland Revenue* [1993] 4 CLJ 339, at pp. 344-345);

(v) the Senior Federal Counsel further relied on para. 5(4) of the Exemption Order, which states "If any question arises as to whether any particular goods are or are not included in the class of goods subject to exemption, such question shall be decided by the Minister" and submitted that the Minister is the determining body to decide whether Yamaha Motors was liable to the sales tax imposed or otherwise. The COA was of the view that the above paragraph refers to a dispute over the class of goods subject to exemption in column (3) goods exempted of Schedule C, it does not deal with the meaning of "finished goods" in column 4 conditions of Schedule C;

(vi) although the apex court in *Palm Oil Research And Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd* [2004] 2 CLJ 265; [2005] 3 MLJ 97 has pronounced that the purposive approach of statutory interpretation could extend to taxing law, when the impugned word(s) is clear and unambiguous, like in the present case, the words, "finished goods", then the court is duty-bound to apply the plain and literal meaning of the words used in the Exemption Order, without having to rely on the purposive approach;

(vii) the appellant was exercising his power to impose additional conditions (in condition No. 3 of the exemption certificate) by limiting the finished goods to finished taxable goods. The COA was of the view that this simply proffers two things. First, the meaning of the term "finished goods" must include non-taxable finished goods in the first place, otherwise, why would there be a need to impose additional conditions to qualify or limit the meaning of "finished goods" in the second place. On the same note, the condition (c), column 4, Item 1, Schedule C has been amended and now stipulates that one of the conditions for goods to enjoy zero sales tax is that "the goods shall be used in the manufacturing of finished goods of (i) taxable goods or (ii) both taxable and exempted goods of the person mentioned in column (2)". In the event before the amendment to condition (c), column 4, Item 1, Schedule C, the words "finished goods" were meant to be finished taxable goods, there is no reason for the legislature to make the amendment in 2022.

Submissions By Yamaha Motors In The Federal Court

Question (i)

[28] Counsel for Yamaha Motors submitted before us that question (i) is irrelevant and ought not to be entertained by this Honourable Court, because:

(i) the issue in the present case relates to whether the term "finished goods" encompasses taxable and non taxable finished goods. The term "tax exempted finished goods" is different from "non taxable goods". The "non-taxable finished goods" suggests that the finished goods are

not subject to tax in the first place. On the contrary, "tax-exempted finished goods" suggests that the finished goods are subject to tax but are exempted from payment through a *Gazette* order issued by the Minister pursuant to s. 35 of the Act 806. Additionally, the term "tax-exempted finished goods" was not raised before the High Court and the Court of Appeal;

(ii) there was no issue pertaining to PU(A) 219 and P.U.A 228 raised at the High Court and the Court of Appeal;

(iii) be that as it may, Yamaha Motors submitted that the COA is right in holding that Item 1 of Schedule C is clear and unambiguous, it did not state "finished taxable goods", it clearly stated "finished goods". There is no requirement that the "finished goods" be taxable. Accordingly, it is submitted that Yamaha Motors clearly fulfils condition (c), column (4) and is therefore entitled to sales tax exemption under Item 1, Schedule C of PU(A) 210;

(iv) Parliament does not act in vain by using the term "finished goods" if it only intended to grant sales tax exemption to raw materials, components and packaging materials that were used solely in the manufacturing of taxable finished goods. As such, the court must endeavour to give significance to every word of an enactment. (*Foo Loke Ying & Anor v. Television Broadcasts Ltd & Ors* [1985] 1 CLJ 511; [1985] CLJ (Rep) 122; *Krishnadas Achutan Nair & Ors v. Maniyam Samykano* [1997] 1 CLJ 636; [1997] 1 MLJ 94);

(v) the Court of Appeal has also rightly held that the subsequent amendment to Item 1, Schedule C of PU(A) 210 shows that Parliament did not intend to limit the sales tax exemption to only raw materials, components and packaging materials that were used solely in the manufacturing of taxable finished goods at the material time and that if Parliament had intended to limit "finished goods" to only taxable finished goods, Parliament would have used express words to that effect. Thus, the words "finished goods" should not be confined to "taxable finished goods";

(vi) in addition, there is no room for the customs authority to read in an additional requirement into Item 1, Schedule C, *ie*,"taxable finished goods". Counsel referred to the case of *Seruntun Maju Sdn Bhd v. Pengarah Kastam Negeri Perak, Jabatan Kastam Diraja Malaysia & Anor* [2020] CLJU 925; [2020] 1 LNS 925 which held that DG Of Customs was barred from imposing additional conditions to a licence initially granted to a duty free shop on the basis that s. 65D(3) of the Customs Act 1967 only allows the appellant to specify the conditions in the licence and there are no provisions that allow the appellant to modify and vary the license or add further conditions. The appellant sought leave to appeal to the Federal Court which was subsequently

dismissed. Yamaha Motors further referred to the cases of *Commissioner of Inland Revenue v. Saxone Lilley & Skinner (Holdings) Ltd* [1967] SC (HL) 1 which held that for additional requirements to take effect, it must be clearly stipulated under written law. (see also *C R Smith Glaziers (Dunfermline) Ltd v. Customs And Excise Commissioners* [2003] STC 419; *The Camille And Henry Dreyfus Foundation, Inc v. Commissioners of Inland Revenue* 36 TC 126; *Sandur Circuits Ltd v. CCE, Belgaum* (Civil Appeal No. 7177 of 2005);

(vii) Yamaha Motors further submitted that, as rightly pointed out by the COA, whilst the Exemption Order allows the appellant to impose conditions which it deems fit, it does not mean that the appellant can impose any condition based on its whims and fancies. The appellant must not add or remove word in those conditions which have already been stated in column (4), Item 1, Schedule C of PU(A) 210; and

(viii) hence, counsel for Yamaha Motors submitted that question (i) should be answered to the effect that Yamaha Motors is entitled to claim exemption under Item 1, Schedule C of PU(A) 210.

Questions (ii) And (iii)

[29] At the outset, it was submitted that the cases referred to in questions (ii) and (iii) are merely persuasive and not binding.

[30] Additionally, Azizul Azmi Adnan J (as he then was) in *Ketua Pengarah Hasil Dalam Negeri v. Kualiti Alam Sdn Bhd* [2017] CLJU 330; [2017] 1 LNS 330 held that "For completeness, I would add that the Cohen LJS principle in *Littman v. Barron* does not mean that a provision giving relief must be construed against the taxpayer ... However, a close examination of *Littman v. Barron* will reveal that the Court of Appeal did not go so far as to suggest that any ambiguity in a provision giving relief must be construed against the taxpayer ...";

(i) the Item 1, Schedule C is clear and unambiguous. It clearly states, "finished goods", which includes both taxable and non-taxable finished goods. This Honourable Court is duty bound to apply Item 1, Schedule C, rather than the cases of *Littman v. Barron* (*supra*) as well as *Ben-Odeco Ltd v. Powlson* (*supra*); and

(ii) in the event this Honourable Court deems it necessary to entertain questions (ii) and (iii), counsel for Yamaha Motors submitted that questions (ii) and (iii) are to be answered in the negative.

Submissions By The Appellant

[31] The learned Senior Federal Counsel agreed with the decision of the learned High Court Judge in the interpretation of Item 1, Schedule C of PU(A) 210 ('Exemption Order') and submitted that the Court of Appeal had erred which justified appellate intervention.

Analysis Of This Court And Decision

Issues To Be Determined

[32] In the context of the appeal before us, this court will determine:

(i) whether Yamaha Motors, being a 'registered manufacturer' only for motorcycles above 250cc, is nonetheless entitled to claim exemption under PU(A) 210 for tax payable for the import or purchase of taxable raw materials for the manufacturing of motorcycles below 250cc (for which sales tax has been exempted at sale level); and

(ii) whether motorcycles below 250cc are entitled to 'double-tax exemption', both at the production stage (under PU(A) 210) as well as at the later sale stage (under PU(A) 219 and PU(A) 228).

[33] The determination of the issues revolves on the interpretation of the provision relating to tax exemption *vis-à-vis* Schedule of PU(A) 210.

[34] The proper approach in the interpretation of taxing statutes and tax exemption provisions is to distil the governing principles from the various case laws from other jurisdictions, which we will address in the following paragraphs of this judgment. This will answer questions (ii) and (iii).

Principles Governing Interpretation Of Taxing Statutes And Tax Exemptions Statutes

[35] In so far as the provisions of tax exemption is concerned, *Halsbury Laws of England* (fifth edn) has set out the principles governing the interpretation of tax exemptions provisions, which are as follows:

> Where a particular instrument falls within the general terms of a head of charge, *the onus of proving that it is nevertheless within an exemption from that head lies on the person alleging the exemption* [citing as authority at footnote [7] *Yelland v. Winter* (1885), and *Holmleigh* (1958)]. *There is no general rule that ambiguities in the wording of the exemption should be construed in his favour* [citing as authority at footnote [8] *Littman v. Barron* (1951)]. *An exemption in general words is limited to the scope of the Act granting it* [citing as authority at footnote [9] *Re Royal Liver Friendly Society* (1870), *Gilpin* (1871), *Bath Corpn* (1871), *Warrington* (1807)].' (*para [309], pp.198-199, Volume 96*);

> ... the normal canons of statutory construction apply to taxing Acts, but in addition there are certain other considerations which may be regarded as special in the construction of such Acts. Thus, it is a general principle of fiscal legislation that to be liable to tax the subject must fall clearly within the words of the charge imposing the tax, otherwise he goes free; and that it is for the Crown to establish that the charge *prima facie* extends to the subject matter sought to be charged. *Whether this strict rule of construction still applies is questionable in view of the very wide deeming provisions enacted to prevent varying form of tax avoidance. However this may be, if the subject is within the scope and terms of the charge, he cannot*

> *escape unless he can bring himself fairly within an express exemption conferred by the statute* [citing as authority at footnote [4] *Maughan* (1893), *Fleming* (1973), *Sansom* (1976), *Ben-Odeco Ltd v. Powlson (Inspector of Taxes)* (1978)].' (para [25], pp.43-44, Volume 58)
>
> (emphasis added)

[36] The onus lies on a taxpayer who claims tax exemption to establish that he has satisfied the requirements and falls within the exemption (see also the House of Lords' case of *Union Corporation Ltd v. Inland Revenue Commissioners* [1953] AC 482, at p. 503). The taxpayer, whose supplies would otherwise be taxable, is to establish that it comes within the exemption, so that, if the court is left in doubt whether a fair interpretation of the words of the exemption cover the supplies in question, the claim to the exemption must be rejected (see *Target Group Ltd v. Revenue And Customs Comsrs* [2023] UKSC 35 at [18]; *State Transport Authority v. Corporation Of City Of Adelaide* [1980] 24 SASR 481).

[37] *Littman v. Barron* (*supra*) as per Cohen LJ, established the principle that in cases of ambiguity, a taxing statute should be construed in favour of a taxpayer. This, however does not apply to a provision giving a taxpayer relief in certain cases from a section clearly imposing liability (see also *Extendicare Ltd And Borough of North York* et a; 27). R. (2d) 9 at pp. 4-5; *Commissioner of Customs (Import), Mumbai v. Dilip Kumar And Co And Ors* [2018] 9 SCC 1).

[38] One of the principles of interpretation of a tax exemption provision is the need to interpret such provisions narrowly/strictly. The recent decisions of the UK Supreme Court (see *Target Group Ltd v. Revenue and Customs Comsrs* [2023] UKSC 35 at [55]-[56]); *News Corp UK & Ireland Ltd v. Revenue and Customs Comsrs* [2023] UKSC 7 at [21], [38]-[40], [106]-[107] and as mentioned in *Halsbury Laws of England (Annual Abridgement 2023)* testify as to this approach:

> [on whether to prefer the narrow interpretation or the wider interpretation] CJEU case law [quoting the EU cases] made it clear that the narrow interpretation was the correct one. *That was consistent with the need to interpret the exemption strictly, the fact that its subject matter was financial; transactions* and its rationale of covering cases where its subject matter was financial transactions and its rationale of covering cases where it was not possible to identify the tax base" (para [1392] on *Target Group Ltd v. Revenue And Customs Comsrs* [2023] UKSC 35 at [55]-[56])
>
> With regard to EU law, it was well established that *zero-rating provisions had to be interpreted strictly, because they constituted exemptions to the general principle that supplied goods and services by taxable persons should be subject to VAT".* (para 1398 on *News Corp UK & Ireland Ltd v. Revenue and Customs Comsrs* [2023] UKSC 7 at [21], [38]-[40], [106]-[107]).
>
> (emphasis added)

[39] The decision of the UK Supreme Court in *Target Group Ltd v. Revenue And Customs Comsrs* [2023] UKSC 35 at [55]-[56] held that:

> [on whether to prefer the narrow interpretation or the wider interpretation] CJEU case law [quoting the EU cases] made it clear that the narrow interpretation was the correct one. *That was consistent with the need to interpret the exemption strictly, the fact that its subject matter was financial transactions* and its rationale of covering cases where it was not possible to identify the tax base' (para [1392] on *Target Group Ltd v. Revenue And Customs Comrs* [2023] UKSC 35 at [55]-[56])
>
> With regard to EU law, it was well established that *zero-rating provisions had to be interpreted strictly, because they constituted exemptions to the general principle that supplied of goods and services by taxable persons should be subject to VAT.'* (para [1393] on *News Corp UK & Ireland Ltd v. Revenue and Customs Comrs* [2023] UKSC 7 at [21], [38]-[40], [106]-[107])';
>
> It was important to bear in mind that the court's task in the present appeal was to construe para 13 of Sch 10 *in its context so as to give effect to the purpose* for which para 13, as part of paras 12 to 17 of Sch 10, had been enacted. *One had to start, as HMRC had submitted, with the principle that Sch 10 was aimed at ensuring that exempt businesses could not recover input tax. On the construction favoured by M, that purpose would be defeated*.' (para [1391] on *Moulsdale t/a Moulsdale Properties v. Revenue and Customs Comrs (Scotland)* [2023] UKSC 12 at [58], [60]).
>
> (emphasis added)

[40] The Supreme Court in *Target Group* explained the rationale for "exemptions be strictly interpreted" so as not to render the "concept" under pinning a particular tax exemption or tax charged "meaningless" (refer at [42]. *News Corporation UK & Ireland Ltd v. Revenue And Customs Comrs* expressed the same sentiment at para [38] when it ruled that:

> In accordance with well-established principles ... exemptions from VAT must be construed strictly. Nevertheless, they **must also be construed in a manner which is consistent with the objectives which underpin them** and not in such a way as to deprive them of their intended effects.
>
> (emphasis added)

[41] Chadwick LJ in *Expert Witness Institute v. Customs And Excise Comsrs* [2001] EWCA Civ 1882 had elucidated what is meant by "strict" interpretation of tax exemption provisions when he said:

> 17. ... A *"strict" construction* is not to be equated, in this context, with a restricted construction. *The court must recognise that it is for a supplier, whose supplies would otherwise be taxable, to establish that it comes within the exemption; so that, if the court is left in doubt whether a fair interpretation of the words of the exemption cover the supplies in question, the claim to the exemption must be rejected*. But the court is not required to reject a claim which does not come within a fair interpretation of the words of the exemption because here is another, more restricted, meaning of the words which would exclude the supplies in question.
>
> (emphasis added)

[42] From the aforesaid, tax exemption provisions must be construed in a manner which is consistent with the objectives which underpin them and not in such a way so as to deprive them of their intended effects.

[43] An exemption provision should be construed in a manner "to make as much sense as it can be of the text of the statutory provisions read in its appropriate context" so as to avoid an absurd consequence where "the obvious purpose of the provisions would be defeated" if a wider/over-inclusive construction of the exemption is adopted (See *Moulsdale t/a Moulsdale Properties v. Revenue And Customs Comsrs (Scotland)* [2023] UKSC 12 at [58], [60], [67]. The Supreme Court in *Moulsdale* was has these to say when met with such situation:

> although the drafting of this legislation is unfortunate" [at para 60], the Supreme Court employed a construction of an exemption which "makes as much sense as it can of the text of the statutory provisions read in its appropriate context" (at para [67] to avoid an absurd consequence where the obvious purpose of the provisions would be defeated" if a wider/over-inclusive construction of the exemption is adopted (at [60]).

[44] The approach in subsequent cases of the Australian courts in:

(i) *JAW & S Property Management Nominees Pty Ltd v. Commissioner Of Stamp Duties* [1989] 1Qd R 530 at 537;

(ii) *Cooper Brookes (Wollongong) Pty Ltd v. Commissioner Of Taxation* [1981] 35 ALR 151 at 170, 176, 180-181;

(iii) *Extendicare Ltd And Borough Of North York et al* 27 OR (2d) 9 at p.4-5; and

(iv) *Estee Lauder Pty Ltd v. Federal Commissioner of Taxation* [1988] 80 ALR 314 at 325-326;

provide a useful guidance, namely, to the wordings of the provision and the context in which it occurs and the objects of the provision of which it is part of. The decisions of the aforesaid cases are consistent with the generally accepted way of construing sales tax legislation, where regard is to be had, to the context, scheme and purpose of the legislation.

[45] In the local context, in *Palm Oil Research And Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd* [2004] 2 CLJ 265; [2005] 3 MLJ 97 at [12], [15], [78]-[79], it established the single approach to adopt in interpreting tax statute. Whether it is a charging provision or an exemption, the approach to take is the purposive construction based on the "*Ramsay* approach" where the words used should be considered in the context and scheme of the relevant Act as a whole, and its purpose should be considered.

[46] Daniel Greenberg CB, *Caries on Legislation*, 13th edn, (2025) at [1097]-[1107] state what is meant by the *Ramsay* approach:

(i) in all cases the court must consider whether the relevant statutory provisions, construed purposively, were intended to apply to the transaction, viewed realistically;

(ii) in the task of ascertaining whether a particular statutory provision imposes a charge, or grant an exemption from a charge, the Ramsay approach is generally described as involving two components or stages. The first is to ascertain the class of facts (which may or may not be transactions) intended to be affected by the charge or exemption. This is a process of interpretation of the statutory provision in the light of its purpose. The second is to discover whether the relevant facts fall within that class, in the sense that they answer to the statutory description. This may be described as a process of application of the statutory provision to the facts;

(iii) both interpretation and application share the need to avoid tunnel vision. The particular charging or exempting provision must be construed in the context of the whole statutory scheme within which it is contained. The identification of its purpose may require an even wider review, extending to the history of the statutory provision or scheme and its political or social objective, to the extent that this can reliably be ascertained from admissible material;

(iv) likewise, the facts must also be looked at in the round;

(v) in looking at particular words that Parliament uses, what the interpreter is looking for is the relevant fiscal concept;

(vi) in approaching the factual question whether the transaction in question answers the statutory description, the facts must be viewed realistically; and

(vii) a realistic view of the facts includes looking at the overall effect of a composite transaction, rather than considering each step individually.

The Concept Of A Single Stage Tax Scheme

[47] Before we move on to the analysis of the provisions which is the subject of contention between both parties, it is pertinent to understand the scheme, concept and the purpose of the sales tax being a single-stage tax.

[48] In this regard, it is a common understanding between the tax consulting profession and customs authority as to the concept, scheme and purpose of the sales tax being a single, stage tax.

[49] It is also the contemporaneous understanding of the tax consulting profession that PU(A) 210 is the mechanism introduced to maintain the single-stage nature of the Act 806 (see 'sales tax', PwC Malaysia official website).

[50] The professional understanding is that under PU(A) 210, exemptions are divided into three Schedule, *ie*, Schedule A, B and C. 'Schedule B Exemption are given to manufacturers of specific goods such as price controlled goods, pharmaceutical products, milk products and exempt goods for export. Manufacturers of such goods would not need to be registered for sales tax to avail of the exemption. Schedule C Exemption are generally for registered manufacturers or their agent to – acquire goods free from sales tax on the basis that such goods will be used as inputs for the manufacture of taxable goods' (see 'sales tax', PwC Malaysia official website).

[51] We take note that these contemporaneous legal opinions expressed by the professional tax consultants are not binding as they are not law, however the learned authors of *Bennion, Bailey And Norbury On Statutory Interpretation* (eighth edn) at pp. 711-715, 777-778 in section 24.3, section 24.22, expressed their views that such contemporaneous legal opinions provide external aids to construction which are admissible to ascertain the concept, scheme and purpose of the Act 806 and PU(A) 210. These materials are generally regarded as 'persuasive opinion' or admissible 'commentaries' to ascertain the intended meaning or effect of Item 1, Schedule C of PU(A) 210.

[52] It is without doubt that exemption with a view to avoid double taxation is a fundamental feature of the Act 806. Avoidance of double taxation is key to maintain the single stage nature of the Act 806, where tax is "levied on imported and locally manufactured goods, either at the time of importation or at the time the goods are sold or otherwise disposed of by the manufacturer". Double deduction is an unusual nature of exemption and it will not be generally accepted unless the language is clear and express (see *Principles of Statutory Interpretation on Tax Exemption Interpretation* by Justice GP Singh, 14th edn at p. 908).

Applying The Above Principles In The Interpretation Of The Provisions To The Facts Of The Present Case

[53] Pursuant to s. 8(1) of the Act 806, sales tax shall be charged and levied on all taxable goods that are:

(i) manufactured in Malaysia by a registered manufacturer and sold, used or disposed off by him; or

(ii) imported into Malaysia by any person.

[54] Sales tax is not charged on:

(i) persons exempted under PU(A) 210;

(ii) goods listed under PU(A) 210; and

(iii) manufacturing activities which are exempted by Minister of Finance under Sales Tax (Exemption From Registration) Order 2018 ((PU(A) 208).

[55] The dispute in the present appeal revolves on the proper interpretation of the words 'finished goods (of any) registered manufacturer' under condition (c) of Item 1, Schedule C PU(A) 210 ('Exemption Order') which we reproduced herein below:

(1) Item No.	(2) Persons	(3) Goods Exempted	(4) Condition	(5) Certificate to be signed by
1.	Any registered manufacturer	Raw materials, components and packaging materials excluding petroleum	(a) that the goods are approved by the Director General; (b) that the goods are imported or purchased from another registered manufacturer or a warehouse licensed under section 65 or licensed manufacturing warehouse under 65A of the Customs Act 1967; (c) that the goods shall be used solely in the manufacturing of finished goods of the person mentioned in column (2); (d) that the person mentioned in column (2) shall pay the sales tax on any goods that cannot be accounted for; (e) any other conditions the Director General deems fit to impose.	Registered Manufacturer

[56] The underlying purpose of Item 1, Schedule C of the Exemption Order is to give effect to the concept that sales tax being a 'single stage tax', namely, sales tax is levied at either the stage of purchasing raw materials for production, or at the stage of the sale of the finished goods. It cannot be at both stages.

[57] Section 2 of the Act 806 defines a 'registered manufacturer' as one who manufactures 'taxable goods'. Related to this, is s. 12(2) of the same which provides that:

> (2) Subject to subsection (3), any manufacturer of taxable goods is liable to be registered.

[58] Section 13 of the Act 806 provides:

> 13(1) Any manufacturer who is liable to be registered under s. 12 shall apply to the Director General for registration as a registered manufacturer in the prescribed form ...

[59] Section 35(1)(b) of the Act 806 specifically empowered the Minister to make the Exemption Order to exempt tax charged and levied on 'any taxable goods manufactured or imported' (read together with s. 8(1)(a) of the Act 806). A

[60] A manufacturer who manufactured tax exempted finished goods, is not required to register under Act 806, hence no sales tax is payable by such manufacturer for the end products. They are not "registered manufacturer" under Act 806. B

[61] Since manufacturer of such tax exempted finished goods is not duty-bound to register and pay any sales tax on the finished goods, no exemption is provided to them under the Exemption Order, because Item 1, Schedule C of PU(A) 210 is concerned only with registered manufacturer for import or purchase of taxable raw materials at the production stage of taxable finished goods. C

[62] To maintain the single-stage tax mechanism, Item 1, Schedule C of PU(A) 210 allows a 'registered manufacturer' of 'taxable finished goods' to claim tax exemption for the purchase of 'taxable' raw materials for production purpose to avoid 'double taxation' since sales tax is levied on the end products manufactured. D

[63] For manufacturers of 'tax exempted finished goods', since the end products are tax exempted, they are not eligible to claim any tax exemption at the production stage. To allow such manufacturer to claim tax exemption at the production stage would be inconsistent with the basic concept of sales tax being a single-stage tax. E

[64] In the present appeal, Yamaha Motors is a 'registered manufacturer' manufacturing motorcycles above 250cc, which are 'taxable finished goods'. At the same time, Yamaha Motors also manufactured motorcycles below 250cc, which are 'tax exempted finished goods'. It is important to bear in mind that for manufacturers of motorcycles below 250cc which are 'tax exempted finished goods', these manufacturers are not a "registered manufacturer" that fall within the Exemption Order under Item 1, Schedule C of PU(A) 210. In other words, Yamaha Motors is not a registered manufacturer for motorcycles below 250cc. F G

[65] Yamaha Motors had purchased 'taxable' components for the assembly of motorcycles below 250cc from a third party using an exemption certificate (exh. 'NNY-2' in encl. (54)), relying on Item 1, Schedule C of the Exemption Order. Motorcycles below 250cc are 'non-taxable goods' under P.U. (A) 219 read with PU(A) 228. H

[66] Yamaha Motors had also utilised tax exemption issued under Item 1, Schedule C of the Exemption Order, and not the so-called Minister's Exemption *vide* the two letters dated 26 September 2018 and 15 October 2018, as evinced by their import declaration in Borang Kastam 1. I

[67] The condition imposed which stipulates that the 'finished goods' as envisaged under Item 1, Schedule C of the Exemption Order must be 'taxable goods' is consistent with the definition of 'registered manufacturer' under s. 2(1) of the Act 806, which refers to ss. 12 and 13 of the same, which in turn is expressly confined to 'manufacturer of taxable goods'.

[68] Yamaha Motors relied on the exemption certificate dated 30 August 2018 (exh. 'NNY-2' in encl. (54)) which it had generated which was 'auto-approved' through the SST system. This self-generated exemption certificate does not involve any process of verification by customs. The certificate which was 'auto-approved' was 'self-generated' upon application by Yamaha Motors. Under the SST regime, the duty is on the taxpayer, in this case, Yamaha Motors to conduct self-assessment as to its eligibility under Item 1 Schedule C of the Exemption Order. Verification on entitlement and compliance will only be conducted by customs subsequently during the random or scheduled audit process. So, the 'auto-approved' exemption certificate is not conclusive on question of eligibility of the taxpayer like Yamaha Motors under Item 1, Schedule C.

[69] The duty on the taxpayer such as Yamaha Motors is to ensure fulfilment of all the requisite conditions in declaring and generating the exemption certificate.

[70] The condition for eligibility under Item 1, Schedule C of the Exemption Order that the 'finished goods' must be 'taxable goods' is expressly stated as 'syarat ketiga' in the exemption certificate dated 30 August 2018 generated and printed out by the Yamaha Motors themselves. The said 'syarat ketiga' expressly prescribed that 'bahan mentah, komponen dan bahan pembungkusan itu hendaklah digunakan dalam aktiviti pengilangan barang siap bercukai pengilang berdaftar' (exh. 'NNY-2' in encl. (54)). Since the condition is expressly mentioned in the exemption certificate generated, printed out, and used by Yamaha Motors on all the purchases, they are deemed to be aware of the condition stipulated.

[71] Yamaha Motors through its director had declared in the exemption certificate (exh. 'NNY-2' in encl. (54)) that it 'certified' that the exemption sought under 'Item 1, Schedule C' for the components purchased 'for use in the manufacture of goods subject to the conditions specified by the DG', which includes 'syarat ketiga' as expressly stated therein.

[72] Yamaha Motors had utilised the tax exemption under Item 1, Schedule C of the Exemption Order, as evinced in the import declaration form for the components purchased, and the exemption certificate which expressly referred to Item 1, Schedule C, and not the so-called Minister's Exemption *vide* letters dated 26 September 2018 and 15 October 2018, Yamaha Motors cannot now seek to rely on the said Minister's letters. In any event, the same condition that the 'finished goods' must be 'taxable goods' was imposed and expressly mentioned in the Minister's letter dated 8 May 2019.

[73] While Item 1, Schedule C of the Exemption Order applies to a 'registered manufacturer' of 'taxable finished goods', the purpose of the said Minister's exemption *vide* letters dated 26 September 2018, 16 October 2018, 8 May 2019 (exh. 'TZ-1', 'TZ-2' and 'TZ-3' in encl. (53)) letters seek to extend the same treatment to a 'franchise holder' on the same conditions.

[74] Item 1, Schedule C of PU(A) 210 provides exemption on taxable raw material or component used for production by a 'registered manufacturer' (as in the case of motorcycle above 250cc).

[75] Item 4, Schedule B of PU(A) 210 on the other hand also provides the same exemption, but it confines the eligibility to manufacturers of exempted goods (as in the case of motorcycles below 250cc) that the exempted goods are 'for export'. For completeness we reproduced below Item 4, Schedule B of PU(A) 210. Hence, only locally manufactured motorcycles below 250cc which are meant for export purpose is eligible to claim for exemption under Item 4, Schedule B of PU(A) 210, which we have reproduced below:

(1) Item No.	(2) Persons	(3) Goods Exempted	(4) Conditions	(5) Certificate to be signed by
4.	Any manufacturer approved by the Director-General	Taxable raw materials and components (including packing materials) excluding petroleum solely for use in the manufacture of exempted goods for export.	(a) That the raw materials and components are imported or purchased from a registered manufacturer; (b) That the raw materials and components are used and the goods produced thereof are exported within 12 months from the date of import or purchase or such further period as approved by the Director-General; (c) That the raw materials and components and the goods produced thereof shall not be sold or otherwise disposed of in Malaysia except as sanctioned by the Director-General and upon payment of the appropriate amount of tax;	The person approved by the Director-General

[76] We refer to the Australian case of *Brayson Motors Pte Ltd v. Federal Commissioner of Taxation* [1985] 59 ALR 265 where the facts are almost similar to the facts of the present appeal. This is a case where the taxpayer/plaintiff was a company carrying on the business of selling motor vehicles by retail, also selling, by way of wholesale, spare parts and motor accessories for those motor vehicles. It was registered as a wholesale merchant under s. 3 of the Sales Tax Assessment Act (No. 1) 1930. It was not the manufacturer nor importer of any of the goods which it sold, whether by wholesale or retail. "The case stated draws a distinction between the plaintiff's wholesale business in one type of goods and its retail business in another. Its certificate of registration is limited to registration as a "wholesale

merchant" and refers in terms to the plaintiff's occupation as a "wholesaler of motor spare parts". The clear inference is that the business in respect of which the plaintiff was registered and was required to be registered was its business as a wholesale merchant of motor vehicle spare parts. The motor vehicles which it sold by retail were not sold in the course of that business. That being so, sales tax was not payable by the plaintiff in respect of those motor vehicles.

[77] In *Brayson Motors Pte Ltd* (*supra*), clearly the business includes both taxable and tax exempted goods, as in our present appeal where Yamaha Motors' business includes sale of taxable finished goods (motorcycles above 250cc) and exempted goods (motorcycles below 250cc). Registration was only required for taxable goods. It was held in *Brayson Motors Pte Ltd* that "sales tax shall be paid by the vendor of goods sold by a "registered person" or a "person required to be registered" to an unregistered person ...", Dixon J explained the underlying legislative policy and the means adopted in the Sales Tax Acts and Regulations. Firstly, is that sales tax was intended to be a tax upon all imported or locally manufactured goods. Secondly, it should be levied upon the last wholesale sale and not upon sale by retail. In the words of Dixon J, 'sales tax was to be a tax levied upon one only of the transactions which commonly take place in respect of goods before they reach the consumer after they are imported into or produced in Australia". This is to avoid double taxation. In our present appeal, it is the concept of the single stage tax.

The Error By The Court Of Appeal

[78] The Court of Appeal had erred in several aspects. Bearing in mind the principles governing the interpretation of tax relief/exemption provisions, the Court of Appeal in its interpretation of the provisions in the Schedule C of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 (PU(A) 210), made no distinction between a tax-charging provision/statute from one which provides relief or exemption from tax. In this context, the Court of Appeal leans towards a literal interpretation from a purposive interpretation, even when it is obvious that the outcome of such literal construction of the exemption would invariably lead to a situation of over-inclusiveness which was not intended by the exemption, which subsequently leads to absurd consequences.

[79] This approach of interpretation adopted by the Court of Appeal is not in tandem with the current judicial trend in the UK (and by extension the EU) as well as Australia, which we have elaborated in the earlier paragraphs of this judgment.

[80] In arriving at its decision, the Court of Appeal had erroneously adopted a wider interpretation on the words "finished goods" in condition (c) of Item 1, Schedule C of P.U.A 210 when it interprets that 'finished goods' in the same includes both 'taxable finished goods' and 'tax exempted goods', because:

(i) firstly, such interpretation defeats the whole purpose of the provision of Item 4, Schedule B of PU(A) 210 where production of exempted goods for local sale purpose is not entitled to the tax exemption for the import or purchase of raw materials;

(ii) secondly, Item 1, Schedule C of PU(A) 210 only applies to a 'registered manufacturer'. It does not apply to a 'franchise holder'. In the case of a 'franchise holder', the Minister's exemption *vide* letters dated 26 September 2018, 16 October 2018, 8 May 2019 (exh. 'TZ-1', 'TZ-2' and 'TZ-3' in encl. (53)) are meant to extend the same exemption under Item 1, Schedule C of PU(A) 210 to a 'franchise holder' with the same condition that it is confined to 'finished taxable goods';

(iii) the Court of Appeal agreed that the condition of 'finished taxable goods' was expressly mentioned in the third letter of the Minister dated 8 May 2019 (at [49] grounds of judgment), implying that in the case of a 'franchise holder', exemption is solely for 'finished taxable goods'. By this, the Court of Appeal created two different scheme of tax exemption treatment for the 'registered manufacturer' on the one hand, and the 'franchise holder' on the other hand. This does not run in tandem with the express fiscal policy of the Government, as attested by the Minister in his affidavit, that the same exemption with the same condition should apply across the board to a 'registered manufacturer' and a 'franchise holder';

(iv) the effect of the Court of Appeal's interpretation is that a manufacturer who produces both category of 'taxable finished product' as well as 'tax-exempted finished product' is liable to be registered as a 'registered manufacturer' and following therefore, is entitled to the benefit of tax relief which was meant only for a manufacturer of 'taxable finished product';

(v) by interpreting as such, the Court of Appeal disregarded the affidavit evidence of the Minister, holding that 'the explanation and deposition in those affidavits attempting to explain the purpose and object of the Exemption Order 2018 that finished goods meant only finished taxable goods could not aid the court to interpret the words 'finished goods' in the manner as the DG of customs intended them to be' (at [38] grounds of judgment);

(vi) in the Minister's affidavit, the Minister, as the maker of all the relevant Exemption Orders, had clearly explained the concept of sales tax as well as the actual intendment of the relevant tax exemption, as follows: So, to maintain the single-stage tax principle, Item 1, Schedule C allows a 'registered manufacturer' of 'taxable finished goods' to claim tax exemption for the purchase of 'taxable' raw materials for production purpose to avoid 'double taxation' since sales tax is levied on the end products manufactured. In the case of a manufacturer of 'tax exempted finished goods', since the end products are not taxable, they are not eligible to claim any tax exemption at the production stage. To allow such manufacturer to claim tax exemption at the production stage would mean zero tax revenue for the Government at both stages of purchase of 'taxable' raw materials for production and the later sale of the finished goods, which is inconsistent with the basic concept of sales tax being a single-stage tax. The same underlying purpose and policy manifested in Item 1 Schedule C was practiced ever since the previous sales tax regime found in the Sales Tax Act of 1972" (para. (6(v)-(viii)) Minister's affidavit in encl. (53)), (para (5(d) Minister's affidavit in encl. (77));

(vii) such interpretation preferred by the Court of Appeal demolishes the very foundation concept of sales tax being a single stage tax, and the fiscal policy that sales tax is exempted at either the stage of purchasing raw materials for production, or at the stage of the sale of the finished goods to avoid double taxation of a registered manufacturer;

(viii) this avoidance of double taxation within a 'single-stage tax concept' underlying sales tax is clearly borne out by PU(A) 219 read together with PU(A) 228 wherein motorcycles below 250cc have already been exempted from sales tax at the stage of sale of the finished goods;

(ix) the effect of the Court of Appeal decision is that a manufacturer of motorcycles below 250cc is entitled to double tax exemption, both at the production stage as well as at the stage of the sale of the finished goods. This is contrary to the Government's fiscal policy of avoiding double taxation on a registered manufacturer of taxable finished goods under the 'single-stage tax concept' of sales tax;

(x) contrary to the opinion of the Court of Appeal that the impugned words 'finished goods' are 'clear and unambiguous' (at [40] grounds of judgment), and that there is no ambiguity or doubt in the said Exemption Order, at the same time, the Court of Appeal itself had identified and entertained the 'ambiguity' and 'doubt' as to why a manufacturer of motorcycles below 250cc, which is a 'tax-exempted finished product', is nonetheless a 'registered manufacturer' for the purpose of satisfying the first condition of the said Exemption Order (see paras. [18]-[20] grounds of judgment);

(xi) even with such doubt, the Court of Appeal proceeded in its deliberation by disregarding the crucial affidavit evidence from the Minister on the fundamental concept of sales tax being a 'single-stage tax', and different tax treatments are applicable for each category of a 'taxable finished product' and 'tax exempted finished product'. Instead, the Court of Appeal circumvented the doubt by applying a literal interpretation on the words 'finished product', and came to the conclusion that there was no doubt or ambiguity in the said Exemption Order;

(xii) a glaring mistake in the Court of Appeal decision is the misapprehension of fact, where (at paras. [34]-[35] of the grounds of judgment), the Court of Appeal held that the manufacturer relied on an approval for exemption given by the Minister *via* certain letters. The affidavit evidence which was supported by the corresponding Customs Declaration Forms showed that the manufacturer was relying on the Exemption Order, and not the Ministerial letters as found by the Court of Appeal;

(xiii) this misapprehension of facts had led the Court of Appeal to misconstrue the effect of the Minister's letters as supporting the contention of the manufacturer on point of law. At this stage, the Court of Appeal already erred in considering the Minister's letters (when that was not factually the case as evinced by the relevant Customs Declaration Forms), yet the Court of Appeal committed a further error in placing sole reliance on the terms contained in one out of a series of three letters (at [35]-[36] of the grounds of judgment), only eventually to cancel off the said sole reliance in the penultimate paragraph (at para. [49] of the grounds of judgment), that the last of the said three letters had actually stated in clear terms that the Minister's approval was similarly applicable only for a 'taxable finished product';

(xiv) on the holding of the Court of Appeal that the appellant cannot impose any condition based on its whims and fancies *vis-à-vis* the appellant must not add or remove word in those conditions which have already been stated in column (4), Item 1, Schedule C of PU(A) 210; for this we refer to the decision of the Supreme Court of India in *CCE v. Hari Chand Shri Gopal* [2011] 1 SCC 2346 which held that "if an exemption is available only on complying with certain conditions, the exemption cannot be granted unless such conditions are complied with. Accordingly, where the assessee satisfied only one condition of the concerned exemption notification, *ie*, intended use of the goods as per the notification, but did not fulfil the other condition, *ie*, following a specified procedure in the event the goods were used elsewhere than in the factory for production, it was held that the exemption cannot be granted unless the second condition was also fulfilled"; and

(xv) the Court of Appeal has allowed and ordered a declaration in the following terms:

> A declaration that the term 'finished goods' in Schedule C of the Sales Tax (Persons Exempted from Payment of Tax) Order 2018 ('Exemption Order') shall not be limited to taxable goods only and accordingly, the applicant shall be entitled to claim exemption under the Exemption Order on the components imported by it for the manufacturing or assembly of the Yamaha Motorcycles, which are non-taxable goods.
>
> The aforesaid decision is a widely worded declaratory order which applies, not only to just Item 1, Schedule C of PU(A) 210 (which is the dispute in the present appeal), but the entire Schedule C of PU(A) 210 which is not the subject matter in the present appeal.
>
> The terms of the declaratory order which applies to the entire Schedule C is also contradicted by the observation made by the Court of Appeal itself that certain other provisions, such as Item 5 of the same Schedule C has used the words 'finished taxable goods' (at para. [32] the grounds of judgment). The effect of the declaration allowed by the Court of Appeal applies to all other Items under the same Schedule C which are not the subject of the challenge in this appeal. This in our view has a far-reaching impact.

The Issue On The Subsequent Amendment Of Item 1, Schedule C Of The Exemption Order By The Legislature

[81] The Court of Appeal in its final analysis refers to the subsequent amendment which was made to Item 1, Schedule C of the Exemption Order *via* para. 4 of the Sales Tax (Persons Exempted From Payment of Tax) (Amendment) Order 2022, which are as follows:

> Amendment of Schedule C
>
> 4. The principal Order is amended in Schedule C:
>
> (a) in relation to Item 1, in column (4):
>
> ...
>
> (i) by substituting for subItem (c) the following sub Item:
>
> (c) that the goods shall be used in the manufacturing of finished goods of:
>
> (i) taxable goods; or
>
> (ii) Both taxable and exempted goods of the person mentioned in column (2);"; and

[82] This amendment takes effect from 1 January 2023 onwards and does not apply retrospectively to Yamaha Motors.

[83] In this respect, Yamaha Motors submitted (which is also the position taken by the COA at para. [45] of the COA judgment) that, had Parliament intended to limit 'finished goods' to only taxable finished good, then why the need to subsequently amend Item 1, Schedule C of the Exemption Order. The Court of Appeal held that "the amendment to the Exemption Order 2018 bolsters the contention that the meaning of the original wording in Schedule C column 4 conditions was not limited to only finished taxable goods, otherwise there was no necessity to amend the Schedule C in 2022" (at [50] grounds of judgment).

[84] The Court of Appeal held that, clearly the said amendment signifies that Parliament did not intend to limit sales tax exemption to only raw materials, components and packaging materials that were used solely in the manufacturing of taxable finished goods at the material time.

[85] It is to be noted that this amendment was made by the Minister after the appeal of the present case was already heard by the Court of Appeal and decision of appeal was reserved.

[86] The issue is this; can it be inferred (as what the Court of Appeal did) that because of the amendments made to Item 1 Schedule C of PU(A) 210 in 2022, the original meaning of the wording in Schedule C column 45 'conditions' was not limited to only finished taxable goods. If not, why the necessity to amend the Schedule C?

[87] We do not think so. We disagree with the inference made by the Court of Appeal for the following reasons:

(i) firstly, to make inference from a later amendment, as the Court of Appeal did in the present case, the pre-condition is that 'the legal meaning of an enactment is doubtful' then only 'subsequent legislation on the same subject may be relied on as persuasive authority as to its meaning' (section 24.19, *Bennion, Bailey And Norbury On Statutory Interpretation* (8th edn) at pp. 769 to 771); and

(ii) secondly, there is no ambiguity as to the provision in Item 1, Schedule C of PU(A) 210, provided it is interpreted correctly.

[88] In the present appeal, the Court of Appeal held that:

> [47] "... the words "finished goods" in para (c) of column 4 conditions of Item 1 of Schedule C could mean both non-taxable finished goods as well as finished taxable goods. The words were held to be clear, unambiguous, unqualified and plain enough to be given a literal interpretation. It is not necessary to apply the purposive approach of statutory interpretation because there is no ambiguity of the meaning and the application of law.

If that is the case, there is no necessity for the Court of Appeal to resort to the 2022 amendment to make inference premised on the same.

[89] We opined that even without the 2022 amendment, the words in Item 1, Schedule C of PU(A) 210 is unambiguous. It is the duty of the court to construe the purported doubtful provision and to ascertain the true intention underlying the original words 'finished goods' as appeared in Item 1, Schedule C of PU(A) 210. In doing so, one must also bear in mind the underlying legal rule (in this case, the concept, scheme and purpose of the Act 806 and PU(A) 210, and in particular that of Item 1, Schedule C of PU(A) 210. In the comment to section 24.19, *Bennion* (*supra*, at p.769) cautioned as follows:

> *Later legislation will not lightly be taken to override the clear legislative intention expressed in the words of an earlier Act*. Here, it is necessary to remember that, except when legislating, the legislature generally has no power authoritatively to interpret the law. *That function belongs to the judiciary alone*. The legislature may, with binding effect, legislate to amend the law. Legislation may even declare what the law is considered to be or to have been. *But a mere indication that the legislature has mistaken the nature or effect of some legal rule does not in itself amount to a declaration that the rule is other than what it is*. As Lord Radcliffe said in *IRC v. Dowdall O' Mahoney & Co Ltd*: "The beliefs or assumptions of those who frame Acts of Parliament cannot make the law'. *Where, however, the legal meaning of an enactment is doubtful, a later Act may be treated as of persuasive authority if it indicates that the legislature took a particular view of the existing law*.
>
> (emphasis added)

[90] The Court of Appeal also held that when there was a doubt or ambiguity, such doubt must be construed in favour of the taxpayer. The case of *National Land Finance Co-operative Society Ltd v. Director General of Inland Revenue* [1963] 4 CLJ 339, at pp. 344 to 345 was referred to. However, the excerpts which was referred to, at para. 36 of the grounds of judgment of the Court of Appeal refers to situation where "courts have refused to adopt a construction of a taxing statute which would impose liability when doubt exists". The case referred to is *Re Micklewait* [1855] 11 Exch 452 which held that a subject is not to be taxed without clear words. Further reference was made to what was said by the Judicial Committee in *Oriental Bank Corporation v. Wright* [1880] 5AC 842, 856, "That the intention to impose a charge upon a subject must be shown by clear and unambiguous language".

[91] The aforesaid cases of *National Land Finance Co-Operative Society Ltd*, *Re Micklewait* and *Oriental Bank Corporation v. Wright* were referring to a taxing statute which would impose liability. It is not about taxing statute which grants tax exemption/relief. *Littman v. Barron* established the principle that in cases of ambiguity, a taxing statute imposing liability should be construed in favor of a taxpayer. This, principle however, does not apply to a provision giving a taxpayer exemption/relief in certain cases from a section clearly imposing liability.

[92] We hold that the provisions are clear with no ambiguity. Item 1 Schedule C of PU(A) 210 ought not to be read *in vacuo* or in isolation of all other Items of exemptions prescribed within the same Exemption Order.

Conclusion

[93] Clearly the Court of Appeal had erred in deciding the way it did. Given the aforesaid, we answer:

(i) question (i) in the negative; and

(ii) questions (ii) and (iii) in the positive.

[94] We thereby allowed the appeal with no order as to costs. We set aside the decision of the Court of Appeal including costs and reinstate the High Court decision.